



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-28/49751

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 6, 2001, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Jefferson County Dept. of Human Services in regard to the allocation of income to the community spouse, a hearing was held on August 14, 2001, at Jefferson, Wisconsin.

The issue for determination is whether the spousal income allocation can be increased above the minimum community spouse income allowance (CSIA).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

State Agency:

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Mary Springer, ESS  
Jefferson County Dept Of Human Services  
Workforce Development Center  
874 Collins Rd.  
Jefferson, WI 53549

Administrative Law Judge:

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Jefferson County.
2. The Petitioner was injured in an accident while on business in California. He was hospitalized in California for 5 months and transferred back to a nursing home in Wisconsin in mid-2001.
3. The Petitioner's spouse lives community along with the couple's two children, ages 12 and 6.

4. The Petitioner's monthly income is \$ 6,111.41 per month. This is from disability insurance. FICA taxes are withheld from the disability payments making the net payment \$ 5643.89. The Petitioner's community spouse is not employed outside of the home at this time.
5. The agency completed a spousal impoverishment calculation to determine the amount of income to be available to the community spouse and concluded the community spouse income allocation (CSIA) should be \$2,175 along with a dependent allowance of \$ 483.75 for each child. Thus the total amount allocated to the community family members is \$ 3142.50.
6. The community spouse has monthly expenses totaling \$ 6815.86. These expenses are detailed in Exhibit # 3.

### **DISCUSSION**

The current community spouse income allowance (CSIA) is the *lesser* of \$ 2,175.00 per month, or \$ 1,875.00 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$ 562.50, known as the "excess shelter allowance". Wis. Stats. § 49.455(4)(b), MA Handbook, App. 23.0.0. The CSIA is considered to be the amount of monthly income the spouse of an individualized individual requires to continue residing in the community and meeting his or her basic maintenance needs.

The Division of Hearings and Appeals has the authority to increase the CSIA above the minimum where it is insufficient to meet a particular community spouse's basic maintenance needs. Wis. Stats. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c); MA Handbook, Appendix 23.6.0.A. This increase can occur only if it is established that the community spouse requires income above the level provided by the minimum due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stats. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c).

The term "exceptional circumstances resulting in financial duress" is defined as situations which result in the community spouse being unable to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code §HFS 103.075(8)(c), Wis. Adm. Code; see also, MA Handbook, Appendix 23.6.0.A3 (last paragraph).

Based upon the above, I do not dispute that the community spouse is eligible for an increase in the CSIA above the minimum. The question is the amount of the increase. The Petitioner's spouse submitted an accounting of the family's monthly expenses over the past year. In reviewing those expenses I am disallowing one expense – the monthly payment for the BMW in the amount of \$ 657.77. Given the fact that this is a community spouse with relatively young children I find the grocery, clothing and activity expenses to be reasonable. The other expenses also represent reasonable and necessary expenses. Even with the exclusion of the BMW, however, the monthly expenses of the community household are in excess of the Petitioner's \$ 6111.41 disability payment. Thus I am allowing an increase in the community spouse income allowance to \$ 6111.41.

### **CONCLUSIONS OF LAW**

1. That the community spouse requires a CSIA in excess of the minimum of \$ 2,175.00 in order to meet her monthly financial obligations.
2. That CSIA for the Petitioner's community spouse is established at \$ 6111.41.

**NOW, THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the county agency with instructions to increase the community spouse's Community Spouse Income Allocation (CSIA) to \$ 6111.41. This action is to be taken within ten (10) days of the date of this decision.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of  
Milwaukee, Wisconsin, this \_\_\_\_\_  
day of \_\_\_\_\_, 2001.

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David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals  
10-2/DDF

cc: Susan Wood